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March 24, 2004

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W., Room TW-B204  
Washington, DC 20554

Re: ***AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced  
Prepaid Card Services, WC Docket No. 03-133***

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits this *ex parte* in response to one filed February 26, 2004 by General Communication, Inc. ("GCI") in the above-captioned proceeding concerning the proper jurisdictional treatment of AT&T's enhanced prepaid card services ("EPPC"). GCI alleges that AT&T's Declaratory Ruling Petition, filed May 15, 2003, is a *post hoc* rationalization of its failure to pay intrastate access charges in Alaska on EPPC calls.

Contrary to GCI's assertion, AT&T's May 15, 2003 Declaratory Ruling Petition does nothing more than request the FCC to declare that, under a straightforward application of the Commission's standard jurisdictional analysis, EPPC calls that "provide the subscriber additional . . . information," 47 C.F.R. § 64.702(a), unrelated to call routing or billing and that undeniably include "interstate communication," 47 U.S.C. § 153(22), are interstate enhanced service calls. Naturally, AT&T filed its petition before the *FCC* to confirm the jurisdictional status of enhanced prepaid card calls, given the apparent intent of at least one state commission to impose intrastate access charges on such calls, in violation of longstanding *federal* jurisdictional principles and thereby to threaten the very availability of the low-priced prepaid card services upon which the poor, senior citizens, members of minority groups and military personnel increasingly depend. *See AT&T Petition at 6-7 & n.6; see also* July 31, 2003 *ex parte* Letter from Navy Exchange Service Command, Department of Navy to Ms. Marlene H. Dortch; FCC; July 25, 2003 *ex parte* Letter from Karen Kerrigan, Chairman, Small Business Survival Committee to Honorable Michael Powell, Chairman, FCC; July 25, 2003 *ex*

*parte* Letter from Robert K. Johnson, Consumers' Voice to Honorable Michael Powell, Chairman, FCC.

Indeed, because AT&T is committed to maintaining efficiently priced EPPC cards, it seeks to maintain the most effective cost structure possible for these services. AT&T's contracts for EPPC services with third party retailers allow for AT&T price escalation in the event of an adverse regulatory decision that raises AT&T's costs. If AT&T were forced to raise its prices for EPPC services, these retailers (including low-priced retail outlets, drug stores and gas stations, among others) would inevitably have to reprice their EPPC cards, thereby adversely affecting their businesses and EPPC consumers.

As demonstrated below, GCI's contention that AT&T has engaged in "legally unsustainable self-help" (*see* GCI at 3) is wrong because AT&T's EPPC service is consistent with existing Commission rulings both as to what constitutes an "enhanced" service and the scope of the FCC's jurisdiction.

### ***AT&T EPPC Calls Are Enhanced Services***

First, contrary to GCI's assertions, AT&T's EPPC service constitutes an enhanced or "information service" under the Communications Act and well-settled precedent. An AT&T EPPC cardholder, for example, dials a toll-free number and establishes a connection with an enhanced prepaid services platform, which then provides the subscriber with additional information that is unrelated to the routing or billing of the call. The service thus "mak[es] available information via telecommunications," 47 U.S.C. § 153(20), "provide[s] the subscriber additional, different, or restructured information," 47 C.F.R. § 64.702(a), and "involve[s] subscriber interaction with stored information," *id.*; *see also Northwestern Bell Telephone Company Petition for Declaratory Ruling*, 2 FCC Rcd. 5986, ¶ 20 (1987) (holding that Teleconnect's Talking Yellow Pages service is an enhanced service because when the subscriber "makes a phone call and hears a recorded advertisement" there is "subscriber interaction with stored information"), *vacated on other grounds*, 7 FCC Rcd. 5644 (1992); *AT&T CEI Order*, 6 FCC Rcd. 4839 (1991) (approving as interstate enhanced service AT&T's Enhanced Services Complex, which combined enhanced services (including stored messages) with the ability to make calls). By seeking to have the Commission abandon its decades-old bright-line distinctions between enhanced and basic services, GCI and incumbent LECs would undermine myriad existing classifications, including broadband classifications that are the subject of pending court and Commission proceedings.

GCI further claims that AT&T does not believe its own theory because it offers its service pursuant to intrastate tariffs in Alaska and if "AT&T really believed it offered an enhanced service, then it would not pay any access charges at all." GCI, Att. 1, at 2. Although AT&T Alascom has some prepaid card services in its intrastate tariffs, the EPPC services that are the subject of AT&T's petition are offered *outside* of tariff as enhanced services. Moreover, AT&T is paying interstate access charges, instead of

relying on the ESP exemption because, at this time, AT&T has voluntarily chosen to use access services rather than local services to originate and terminate EPPC calls.

***AT&T EPPC Calls Are Jurisdictionally Interstate***

Second, GCI's claims notwithstanding, the Commission can and should exercise jurisdiction over all aspects of EPPC communications. When using AT&T's EPPC service, the calling party calls the platform and the platform transmits a stored message to the calling party. This communication takes place regardless of whether the cardholder communicates with any third party (*i.e.*, if the called party does not answer or the calling party hangs up without attempting any further communications). And this communication is indisputably an "interstate" "communication[] by wire," 47 U.S.C. §§ 152(a), 153(22), when, as in almost all cases, the transmission begins in one state and ends in another. Once it is recognized that EPPC calls include an interstate communication, the Commission has clear authority to exercise end-to-end jurisdiction under any one of several approaches – particularly when, as here, an information service is at issue. *See Petition for Declaratory Ruling that pulver.com's Free Word Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27, rel. February 19, 2004, ¶ 16 ("federal authority has already been recognized as preeminent in the area of information services").

Under the Commission's traditional end-to-end jurisdictional analysis, EPPC services consist of multiple "communications" within the meaning of the Communications Act. The first communication is initiated by the calling card user to the AT&T platform, in which the caller hears the message typically selected by the card retailer (*e.g.*, "Remember to shop at ABC Club for all of your needs.").<sup>1</sup> Under FCC and court precedents, this active communication of information unrelated to call routing between the platform and calling party plainly creates a call "endpoint." Contrary to GCI's suggestions, the FCC has never held that an end-to-end communication is a single call when, as here, a separate communication emanates from an intermediate platform that does constitute a call *endpoint*.<sup>2</sup> And because the calling party initiates interstate

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<sup>1</sup> The AT&T platforms currently store and communicate to subscribers approximately 100 different messages. The messages are of varying duration and content, running the gamut from advertisements for merchants, "your local post office," and military exchanges, to information about "Upromise," an Internet-based college savings plan, "Operation Uplink," a program that keeps military personnel and hospitalized veterans in touch with their families and loved ones by providing them with a free phone card (and that is sponsored by, among others, SBC), and "Paypal," a secure method of purchasing goods and services over the Internet, to messages from public figures requesting donations to, for example, the Alzheimer's Association.

<sup>2</sup> The fact that the enhanced prepaid services platform engages in its own advertising message that is non-call-routing/billing-related establishes a separate communication

communications with the platform and directly receives those communications from the platform, any access charges at the originating end are within the interstate jurisdiction. On a two-call theory, which recognizes that the separate communication from the platform creates call endpoints, any terminating access charges in connection with the call from the platform to the called party are likewise within the interstate jurisdiction. AT&T's position here is entirely consistent with the FCC's prior rulings, including its holding as to three-way calls that separate, independent communications at an intermediate point in the call establish call *endpoints* at the intermediate point and thus two separate calls, each of which can be subject to interstate or intrastate access depending on the location of the parties. *AT&T Corp. et al. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd. 556, ¶¶ 66 n.166, 69-70 (1998).

Moreover, even if the Commission deemed all of the EPPC service communications between a calling party, the platform and the called party to be a single "call" for jurisdictional purposes, that call would still properly be classified as jurisdictionally *interstate*, because the EPPC call contains at least one "communication" that is indisputably interstate – the message from the retailer to the cardholder. AT&T Petition at 15-17; *see, e.g.*, 47 U.S.C. § 153(22); *pulver.com*, ¶¶ 20, 22; *GCI v. ACS*, 16 FCC Rcd. 2834, ¶ 24 (2001) ("[i]t is well settled that when communications, such as ISP traffic, are jurisdictionally mixed, containing both interstate and intrastate components, the Commission has authority to regulate such communications"); *Intercarrier Compensation for ISP-Bound Traffic*, Notice of Proposed Rulemaking, 14 FCC Rcd. 3689, ¶ 18 (1999); *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd. 9151, ¶¶ 57-58 (2001); *GTE Tel. Operating Cos.*, 13 FCC Rcd. 22466, ¶¶ 22-26 (1998) (DSL services should be tariffed at the state level only where the service is entirely intrastate).

Finally, AT&T prepaid card calls are information services that make use of underlying telecommunications that are jurisdictionally *interstate*, regardless of the jurisdictional classification of the overall enhanced service. These underlying interstate telecommunications services or "building blocks" remain interstate services within the jurisdiction of the FCC even if the *overall* information service, of which it is merely a building block, were jurisdictionally intrastate. *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Phase I, 4 FCC Rcd. 1, n.617 (1988) ("Thus, an otherwise interstate basic service . . . does not lose its character as such simply because it is being used as a component in the provision of a service that is not subject to Title II").

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(footnote continued from previous page)

with the caller and distinguishes AT&T's EPPC service from other arrangements that the FCC has found constitute a single call (such as traditional debit card calls). AT&T Petition at 12-13. To the extent that AT&T Alascom has contended in prior proceedings before the RCA that 907-to-907 debit card calls are intrastate (*see* GCI, Att. 1, at 1), those proceedings did *not* involve *enhanced* prepaid card services.

***GCI Is Protected By AT&T's Corporate Guarantee***

GCI alleges that by characterizing EPPC calls as interstate AT&T has shifted a larger portion of intrastate access charge payment responsibility in Alaska to GCI. The Regulatory Commission of Alaska ("RCA") has stayed its order that would otherwise have required AT&T Alascom to pay intrastate access charges on EPPC calls, pending a ruling by the FCC on AT&T's declaratory ruling petition. In consideration of this stay, AT&T has posted a corporate guarantee that "unconditionally and irrevocably guarantees to the RCA that if the Federal Communications Commission ("FCC") determines in a final order in its proceeding to address Guarantor's [AT&T's] Petition for Declaratory Ruling Regarding Enhanced Prepaid Card Services (FCC Docket No. 03-133) that Alascom's Alaska-to-Alaska prepaid calls are subject to intrastate access charges, Guarantor [AT&T] will make full payment of any amounts thereby properly due and payable by the Guaranteed Party [Alascom]" in accordance with the RCA's August 1, 2003 Order. The AT&T corporate guarantee was filed at the RCA on September 12, 2003 and is updated every six months as to amount, with the most recent update occurring on March 12, 2004. Accordingly, AT&T has assured that the funds will be available should rebalancing of access charges be required.

***AT&T Has The Necessary Call Detail To Confirm The Volume Of 907-To-907 Calls***

GCI also points to the Alascom Tariff FCC No. 11 proceedings to note that, in the past, Alascom has had problems with collection of usage data in Alaska. Here, however, as Alascom has explained in proceedings before the RCA, this problem does *not* exist.

"Contrary to AECA's assertions, AT&T Alascom does, in fact, maintain records that contain the information necessary to calculate any amounts that may ultimately become due.

The records (to be referred to as Enhanced Prepaid Card AMA security records, or EPPC AMA security records) are standard AMA records obtained from AT&T's enhanced prepaid platforms that reflect the telephone numbers of the end-user calling and called parties. These EPPC AMA security records have been maintained and stored since March 2002. Standard AMA detail earlier than 2002 is also available for retrieval and analysis if necessary. For periods in which records are no longer available, it is nevertheless possible to provide a reliable estimate given that prepaid card growth rates are known. Therefore, to extrapolate reliable estimates of historical traffic, should it be necessary, is a reasonably simple process using data from within the known range (*i.e.*, existing EPPC AMA security records.)" *See AT&T Alascom's Motion to Dismiss AECA's January 21, 2004 Complaint, RCA Docket No. U-04-005, filed February 10, 2004, at 8-9, errata, filed March 1, 2004 (footnotes omitted).*

Thus, the 907-to-907 demand data will be available, if necessary, to identify EPPC calls.

***Conclusion***

Accordingly, AT&T urges the Commission to confirm that AT&T's EPPC services are jurisdictionally *interstate* information services under existing federal precedents, whenever the calling and called parties are located in a state different from the enhanced prepaid card platform. This outcome is not only consistent with the FCC's jurisdictional holdings, but it ensures that low-income consumers, students, recent immigrants, members of minority groups, military personnel and retirees on fixed incomes, who depend on cost-effective prepaid card services to meet their communications needs, will continue to have access to low-priced prepaid cards.

One electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,

/s/

Judy Sello

cc: William Maher  
Tamara Preiss  
Steve Morris  
Paul Moon